8711 Engineering Services	$7.5
Military and Aerospace Equipment and Military Weapons	20.0
Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	20.0
Marine Engineering and Naval Architecture	13.5
8712 Architectural Services (Other than Naval)	5.0
8713 Surveying Services	3.5

Dated: December 23, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 98–2609 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV026–6004; FRL–5957–7]

Approval and Promulgation of Air Quality Implementation Plans; Approval Under Section 112(l) of the Clean Air Act; West Virginia; Revisions to Minor New Source Review and Addition of Minor Operating Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part and disapprove in part a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This SIP revision changes portions of West Virginia's minor new source review permit program and establishes new provisions for permitting existing stationary sources. This action proposes to disapprove a new exemption from minor new source review for sources which have been issued permits pursuant to the State's operating permits program developed pursuant to Title V of the Clean Air Act (''the Act''). This action also proposes to disapprove the provisions governing the issuance of temporary construction and modification permits. This action proposes to approve all other provisions of West Virginia's minor new source review and existing stationary source operating permit program. The intended effect of this action is to propose approval of those State provisions which meet the requirements of the Clean Air Act, and disapprove those State provisions which do not. This action is being taken under section 110 of the Clean Air Act. EPA is also proposing approval of West Virginia's minor new source review and existing stationary source operating permit program pursuant to Section 110 of the Act for the purpose of creating federally enforceable permit conditions for sources of criteria air pollutants. EPA is also proposing approval of West Virginia's minor new source review and existing stationary source operating permit program under section 112(l) of the Clean Air Act in order to extend the Federal enforceability of State permits to include hazardous air pollutants (HAPs).

DATES: Comments must be received on or before March 5, 1998.

ADDRESSES: Comments may be mailed to Kathleen Henry, Chief, Permit Programs Section, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Jennifer M. Abramson,(215) 566–2066, or by e-mail at Abramson.Jennifer@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Minor New Source Review

Section 110(a)(2)(C) of the CAA requires every SIP to ''include a program for the * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved.'' EPA's regulations now codified at § § 51.160 through 51.164 have since the early 1970s required a new source review (NSR) program, and one is included in every state implementation plan (SIP). This requirement predates and is separate from the requirement also set forth in section 110(a)(2)(C) that States have ''major'' NSR permitting programs under part C for the prevention of significant deterioration of air quality (PSD) and part D for nonattainment area permitting (nonattainment NSR) of title I.

B. Federally Enforceable State Operating Permit Programs

Many stationary source requirements of the CAA apply only to ''major sources''. Major sources are those sources whose emissions of air pollutants exceed threshold emissions levels specified in the Act. To determine whether a source is major, the Act focuses not only on a source's actual emissions, but also on its potential emissions. Thus, a source that has maintained actual emissions at levels below the major source threshold could still be subject to major source requirements if it has the potential to emit major amounts of air pollutants. However, in situations where unrestricted operation of a source would result in a potential to emit above major-source levels, such sources may legally avoid program requirements by taking federally-enforceable permit conditions which limit emissions to levels below the applicable major source threshold, becoming what is termed a ''synthetic minor'' source. [1]Federally-enforceable permit conditions, if violated, are subject to enforcement by the Environmental Protection Agency (EPA) or by citizens in addition to the state or local agency. On June 28, 1989, EPA published guidance on the basic requirements for EPA approval of (non-title V) federally enforceable state operating permit programs (FESOPPs). See 54 FR 27274. Permits issued pursuant to such programs may be used to establish federally enforceable limits on a source's potential emissions to create ''synthetic minor'' sources.

C. Federally Enforceable Permit Conditions for Hazardous Air Pollutants

Section 112(l) of the Act provides EPA with the authority to approve state programs which regulate sources of HAPs, analogous to the section 110 authority provided to EPA for sources of criteria air pollutants. EPA believes it

[1] Several other mechanisms for major sources to become ''synthetic minors'' and legally avoid major source program requirements exist. For more information, refer to the memorandums entitled ''Extension of January 25, 1995 Potential to Emit Transition Policy'' (August 28, 1996), ''Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit'' (January 22, 1996), ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act (Act)'' (January 25, 1995), and ''Approaches to creating Federally-Enforceable Emissions Limits'' (November 3, 1993).

has the authority under section 112(l) to approve state programs for the purpose of making permit conditions involving HAPs federally enforceable. EPA believes it is consistent with the intent of section 112 of the CAA for states to provide mechanisms through which sources may avoid classification as major sources by obtaining federally enforceable limits on potential to emit. Other available mechanisms for sources of hazardous air pollutants to avoid classification as major sources are available (See footnote 1).

II. Summary and Analysis

On August 26, 1994, the West Virginia Department of Environmental Protection (WVDEP) submitted for EPA approval a revision to the West Virginia State Implementation Plan (SIP) regarding the issuance of minor new source review and federally enforceable state operating permits. This SIP revision, entitled 45CSR13– ''Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation'', amends and replaces 45CSR13 ''Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation'', effective June 1, 1974, which was approved into the SIP November 10, 1975. On September 5, 1996, the West Virginia Department of Environmental Protection (WVDEP) submitted a letter clarifying that West Virginia also requests EPA approval under CAA section 112(l) of the 45CSR13 program submitted on August 26, 1994.

In order to evaluate the approvability of West Virginia's submittal as a SIP revision, the changes from the SIP approved version of 45CSR13 must meet all applicable requirements (procedural and substantive) of 40 CFR part 51 and the CAA. EPA has reviewed this SIP revision package in accordance with the completeness criteria described in section 110(k)(1) and 40 CFR part 51, appendix V and has found it to be administratively and technically complete. The technical support document (TSD) prepared in support of this proposed action contains a detailed analysis of West Virginia's SIP submittal. The formal SIP submittal, completeness determination and TSD are available for review as part of the public docket at the times and locations listed in the **ADDRESSES** section of this document.

EPA's requirements for SIP approval applicable to minor new source review permitting programs are established in part 51, subpart I—Review of New Sources and Modifications, § § 51.160. through 51.164. Other sections of subpart I, applicable only to new sources and modifications which are major, do not apply and are thus not addressed in this analysis. [2]West Virginia's SIP submittal must also satisfy the criteria discussed in the June 28, 1989 **Federal Register** (54 FR 27274) in order for EPA to consider operating permits issued pursuant to 45CSR13 to be federally enforceable on a permanent basis. [3]These same criteria, in conjunction with the statutory requirements of section 112(l)(5) of the Act, are used to evaluate the approvability of the 45CSR13 program for the purpose of creating federally enforceable permit conditions for sources hazardous air pollutants (HAPs).

A. Minor New Source Review

The SIP revision represents comprehensive changes from the SIP approved version of West Virginia's minor new source review program. For purposes of efficiency, the discussion and analysis of these changes are grouped according to the following categories: applicability, permit issuance procedures (including public participation), and program features and nomenclature.

1. Applicability

West Virginia's submittal exempts constructions, modifications, and relocations which are subject to the major preconstruction permit requirements of West Virginia's 45CSR14 (PSD) or 45CSR19 (non-attainment NSR) programs from minor new source review permitting requirements. The purpose of this exemption is to avoid duplicative permitting obligations for the construction and relocation of new major sources, and for sources which undergo major modifications since such activities are subject to the State's major new source review permitting programs. The submittal also exempts a category of sources referred to as ''Indirect Affected sources'' from West Virginia's minor new source review program. Indirect sources are facilities such as parking lots, highway projects, and airport constructions or expansions which attract or potentially attract mobile sources of pollution. The Federal requirement for state SIPs to include ''indirect source review programs'' has been removed (see CAA section 110(a)(5)). West Virginia's submittal also attempts to exempt sources which have been issued operating permits pursuant to Title V of the Clean Air (herein after referred to as ''Title V sources'') from minor new source review. If approved into the SIP, such an exemption will apply to virtually all major sources in West Virginia. Although constructions and modifications at Title V sources are subject to the permit revision procedures of West Virginia's Title V permitting program, such procedures do not replace the Federal requirements for new source review (major or minor) applicable to such activities. The effect of this exemption is to allow constructions of new non-major sources and non-major modifications at Title V sources to proceed without considering the impact of such activities on the State's control strategy (including applicable PSD increments) or ability to attain or maintain national ambient air quality standards (NAAQS). Accordingly, West Virginia is unable to prevent activities at Title V sources which result in violations of the State's control strategy, or interfere with attainment or maintenance of the NAAQS, a fundamental requirement of new source review programs.

In addition to the categorical exemptions discussed above, West Virginia's submittal changes applicability to minor new source review in other ways. The program uses the terms ''stationary source'' and ''modification'' to define the scope of activities which are subject to review. Both these terms are defined with emissions levels determining what qualifies as either a ''stationary source'' or a ''modification''. Unless subject to an emissions control rule promulgated by the Commission, sources with emissions or potential emissions below the specified ''stationary source'' emissions levels are not considered to be ''stationary sources''. West Virginia employs a (six) 6 lb/hr threshold for sources of VOC or any of the pollutants for which the State has promulgated an ambient air quality standard (SO2, PM10, NO2, CO, O3 and non-methane

[2] West Virginia has developed separate rules to meet the requirements of subpart I applicable to major sources, namely, 45CSR14 – ''Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration'' and 45CSR19 – ''Requirements for Pre-Construction Review, Determination of Emissions Offsets for Proposed New or Modified Sources of Air Pollutants and Emission Trading for Intrasource Pollutants''.

[3] In the memorandums entitled ''Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit'' (January 22, 1996) and ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act (Act)'' (January 25, 1995), EPA announces a temporary recognition of practically enforceable state limits on potential emissions as being federally enforceable.

hydrocarbons). The 6 lb/hr size threshold for stationary sources, a component of West Virginia's SIP since the 1970's, now also applies to sources of VOCs, a category of pollutants which are regulated as ozone precursors. For sources of hazardous or toxic air pollutants (HAPS/TAPS), West Virginia employs a new threshold equal to or above levels employed in the State's toxic emissions control rule(45CSR27). These levels range from (eight-tenths) 0.8 lbs/yr (Beryllium) to (ten thousand)10,000 lbs/yr (Allyl Chloride, Trichloroethylene). Lead and lead compounds are defined as HAPS/TAPS with a (twelve thousand) 12,000 lbs/year threshold.

Accordingly, West Virginia's minor new source review program captures all non-major sources which are subject to State emission control rules, and other non-major sources with potential or actual emissions above established thresholds. Similarly, physical or operational changes at stationary sources which result in emissions increases below the ''modification'' emission levels are not considered to be ''modifications''. Where the SIP-approved version of 45CSR13 contained no such emission levels to define modifications, West Virginia's submittal employs a modification threshold of (two) 2 lbs/hr or (five) 5 tons/year or more of any pollutant which is not a toxic or hazardous air pollutant. For sources with potential emissions of hazardous or toxic air pollutants equal to or greater than the levels specified in West Virginia's toxic emissions control rule (45CSR27), any change which results in an emissions increase is considered to be a modification and subject to minor new source review. Changes at sources with potential emissions below the 45CSR27 levels are also considered to be modifications if the emissions increase would result in total emissions at the source above the 45CSR27. Regardless of the pollutants involved, the program requires changes which result in emission increases below the modification emissions thresholds to be reported to the State. On a case-by-case basis, the State may determine that such activities must also be permitted. This notification requirement for modifications provides an additional layer of protection which will enable the State to determine whether small changes at sources will interfere with the attainment and maintenance of the NAAQS, or violate the control strategy (including PSD increments).

Similar to the Federal definition of the term ''major modification'' in 40 CFR part 51, the definition of ''modification'' in 45CSR13 exempts certain types of actions. As a new exemption, section 2.18.d.A. precludes from being considered a modification the installation or replacement of air pollution control equipment if the new equipment is at least as effective as the equipment replaced and no new air pollutant is discharged from its installation. EPA believes that this exemption employs adequate safeguards for purposes of West Virginia's minor new source review program. West Virginia's program uses the terms ''major stationary source'' and ''major modification'' to establish the upper limits of the scope of the 45CSR13 program. Identical terms are used to determine applicability in West Virginia's major pre-construction permitting programs, 45CSR14 (PSD) and 45CSR19 (non-attainment NSR). [4]Since 45CSR13 exempts construction and modification-related activities which are subject to either 45CSR14 or 45CSR19, it is critical that these programs define ''major stationary source'' and ''major modification'' consistently to avoid confusion when determining which pre-construction permitting program applies in a given instance. [5]The 45CSR13 definition of the term ''Major modification'' references the definitions continued in 45CSR14 and 45CSR19 and thus inherently satisfies EPA's concern about definition parity. While the 45CSR13 definition of ''Major stationary source'' is consistent with the definitions found in 45CSR14 and 45CSR19 in terms of emissions thresholds, the 45CSR13 definition does not delineate when fugitive emissions need to be included as is done in the major permit program rules. Without such a distinction, the 45CSR13 definition could be interpreted to require fugitive emissions to be included in all cases so that certain sources of fugitive emissions are ''major sources'' under 45CSR13 but not under 45CSR14 and 45CSR19. This presents a consistency problem since such sources would be exempt from all new source review requirements. To address this issue, West Virginia submitted a written clarification indicating that, with respect to the inclusion of fugitive emissions in major stationary source determinations, the definition of ''Major stationary source'' in 45CSR13 will be interpreted consistently with 45CSR14 and 45CSR19.

2. Permit Issuance Procedures

The procedures for permit issuance applicable to the issuance of construction, modification, relocation, and existing stationary source operating permits have been enhanced to satisfy the requirements of § 51.161 for new source review programs and the criteria set forth by EPA on June 28, 1989 (57 FR 27274) for federally enforceable state operating permit programs (FESOPPs). Other changes affecting permit issuance include the addition of new provisions for conducting completeness evaluations of permit applications, revised deadlines for permit issuance, and the removal of outdated source registration provisions. Provisions allowing sources to construct or modify by default have also been removed.

The revised procedures also allow the Chief to issue temporary permits which authorize experimental product or process changes for up to six (6) months (which may be extended in writing up to twelve (12) additional months). In acting to issue or deny an application for a temporary permit, the Chief is required to provide a fifteen (15) day public comment period on the temporary permit application.

EPA recognizes that, in some cases, a full-scale six (6) month minor new source review permit issuance process for proposed experimental product or process changes may be impracticable and/or unnecessarily burdensome. EPA also recognizes that states should have the ability to limit the public participation for certain minor new source permitting actions. Since states can exempt certain activities from minor NSR based on de minimis or administrative necessity grounds in accordance with the criteria set forth in *Alabama Power Co.* V. *Costle*, 636 F.2d 323(D.C. Cir. 1979), it follows that states should also be able to provide partial or full exemption from the full public process requirements of § 51.160(e). Any such limitation on the full public participation requirements of § 51.160(e), however, should be applied consistent with the environmental significance of the activity. [6]Although

[4] The definition of the terms ''major stationary'' source and ''major modification'' in West Virginia's 45CSR14 (PSD) and 45CSR19 (non-attainment NSR), must be consistent with the federal definitions found in section 40 CFR 51.165 (non-attainment New Source Review(NSR)) and § 51.166 (Prevention of Significant Deterioration (PSD)).

[5] The issue of consistency of terms is addressed in the proposed revisions to title 40 of the Code of Federal Regulations (40 CFR) parts 51, 70 and 71 published in the Federal Register on August 31, 1995 (see 60 FR 45564). In this document, EPA proposes rulemaking to clarify that all of the terms used in § § 51.160 through 51.164 have the same meaning as provided elsewhere in subpart I of part 51, or in the Act.

[6] On August 31, 1995, EPA proposed a new paragraph (c) in § 51.161 to clarify that, except for certain specified activities; state programs may vary procedures for, and timing of, public review in light of the environmental significance of the activity (see 60 FR 45564).

temporary permits are issued only in specific instances and for limited periods of time, such conditions do not characterize situations of an inherently less environmentally significant nature. The effect of the temporary permitting procedure is that environmentally significant constructions or modifications may be authorized on a temporary basis without adequate opportunity for public participation. Without a correlation to the environmental significance of the activity, EPA cannot consider the minimum public process afforded, fifteen (15) days, to be adequate in all instances.

3. Program Features and Nomenclature

The revisions to 45CSR13 include new administrative provisions for issuing general permits authorizing construction or relocation of a category of sources by the same operator, or involving the same or similar precesses or pollutants, in accordance with the terms and conditions specified in the general permit. The revised 45CSR13 also establishes new provisions allowing for permit transfers after the Chief determines that the proposed permittee has all necessary permit responsibility. The new permittee must certify that a complete copy of the permit application and permit has been reviewed, and that all terms and conditions in the permit and operating parameters contained in the application will be adhered to. The Chief must also be provided a written agreement between the existing and new permittee with regard to the specific transfer date and the extent of permit responsibility between them. The revised 45CSR13 also includes a new provision for permit cancellation requiring permit holders to submit requests for cancellation in writing. The cancellation provision specifies that no permit cancellation shall become effective until the permittee and EPA have been given at least 30 days written notice. The cancellation provision further specifies that permit cancellation will not excuse any violation of permit terms or conditions prior to the effective date of the permit cancellation.

The revisions to 45CSR13 include the addition of several new terms and the modification of existing terms which are defined in a manner consistent with the program's proper implementation and with the corresponding definitions of § § 51.165 and 51.166 applicable to major new source review permitting programs. The revisions also delete several outdated terms such as ''indirect affected source''. These changes update the program—s definitions consistent with the current terminology employed by the Act and with EPA's regulations.

B. Federally Enforceable State Operating Permit Programs

On June 28, 1989 EPA amended the definition of ''federally enforceable'' to clarify that terms and conditions contained in state-issued operating permits are federally enforceable provided that the state's operating permits program is approved into the SIP under section 110 of the CAA as meeting certain criteria, and provided that the permit conforms to the requirements of the approved program (54 FR 27282). The five criteria set forth by EPA require state programs to: (a) Be approved into the SIP; (b) impose legal obligations to conform to the permit limitations; (c) provide for limits that are enforceable as a practical matter; (d) issue permits through a process that provides for review and an opportunity for comment by the public and by EPA; and (e) ensure that there will be no relaxation of otherwise applicable Federal requirements. West Virginia's revised 45CSR13 includes a new ''opt-in'' provision where sources not otherwise required to be permitted for purposes of new source review may voluntarily apply for an existing stationary source operating permit. This provision was added so that 45CSR13 could serve dually as West Virginia's minor new source review program and as its FESOPP. The procedures for issuing existing stationary source operating permits under 45CSR13 are identical to those followed for issuing minor new source review permits. West Virginia's revised 45CSR13 program meets the June 28, 1989 criteria by ensuring that permit terms are permanent, quantifiable, and practically enforceable and by providing adequate notice and comment to both EPA and the public. However, since such requirements must be satisfied on a permit by permit basis, EPA may deem individual permits which contain terms and conditions that are not quantifiable or practically enforceable not ''federally enforceable''. Regarding ''permanence'', section 11.3 of West Virginia's rule provides that the issuance of a Title V operating permit will operate to revoke an existing stationary source operating permit. EPA expects that many of the existing stationary source operating permits issued are to sources which are seeking to avoid Title V permitting obligations. For these sources, the ''automatic revocation'' provision will not be triggered. However, some sources may rely on limitations on potential emissions established in existing stationary source operating permits to avoid other ''major source'' program requirements such as major NSR, PSD, or Title III MACT standards and will trigger the ''automatic revocation'' provisions. For these sources, the superseding Title V permit will need to address such limitations as applicable requirements (similar to how minor NSR permit conditions are addressed in the Title V permit), or else place the source at risk for violating applicable ''major source'' program requirements. EPA is assured that sources that obtain limitations on potential emissions in existing stationary source operating permits will keep such limitations in effect, so as to never be in violation of ''major source'' permitting or other program requirements. EPA interprets section 11.3 to authorize supersession of existing stationary source operating permits only, and not construction, modification or relocation permits. The TSD provides a thorough analysis of the West Virginia's 45CSR13 program against EPA's June 28, 1989 criteria.

C. Federally Enforceable Permit Conditions for Hazardous Air Pollutants

West Virginia's revised 45CSR13 defines the term ''regulated air pollutant'' to include nineteen (19) hazardous/toxic pollutants which are regulated by the State's air toxic rule (45CSR27), and ''..any other pollutants subject to an emissions standard promulgated by the Commission including mineral acids in 45CSR7.'' West Virginia has adopted specific regulations which incorporate Federal National Emissions Standards for Hazardous Air Pollutants (NESHAPS) promulgated at 40 CFR parts 61 and 63 by reference. West Virginia updates these authorities in State regulations on an annual basis. EPA interprets the 45CSR13 definition of ''regulated air pollutant'' to provide the necessary authority for 45CSR13 permits to contain conditions on HAPs which are regulated by 40 CFR parts 61 and 63 NESHAPS and which have been adopted into West Virginia's regulations. On September 5, 1996, the West Virginia Department of Environmental Protection (WVDEP) submitted a letter clarifying that West Virginia also requests EPA approval under section 112(l) of the 45CSR13 program submitted on August 26, 1994.

EPA approval of 45CSR13 program under section 112(l) of the Act is necessary to extend West Virginia's authority under section 110 of the Act to include the authority to create federally enforceable limits on the potential to emit HAPs. EPA has determined that the five approval criteria for approving FESOPPs into the

SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving programs under section 112(l). Although the June 28, 1989 notice did not address HAPs, this is because it was written prior to the 1990 amendments to section 112 of the CAA. EPA believes that the use of the same criteria for evaluating programs for both criteria and hazardous pollutants is appropriate since the approval criteria are not based or dependent on pollutant, but on general program elements which must be present for the program to be deemed minimally approvable by EPA. Hence, the five criteria discussed above are applicable to FESOPP approvals under section 112(l) as well as under section 110.

In addition to meeting the criteria discussed above, state programs must meet the statutory criteria for approval under section 112(l)(5) of the CAA. This section allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any Section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with Section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA. EPA plans to codify the approval criteria for programs limiting the potential to emit of HAPs through amendments to Subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262). EPA currently anticipates that these criteria, as they apply to FESOPP programs, will mirror those set forth in the June 28, 1989 notice, with the addition that the State's authority must extend to HAPs instead of or in addition to VOC's and PM10. The EPA currently anticipates that FESOPP programs that are approved pursuant to Section 112(l) prior to the planned Subpart E revisions will have had to meet these criteria, and hence will not be subject to any further approval action.

EPA believes it has the authority under section 112(l) to approve programs to limit potential to emit of HAPs directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the timing problems posed by impending deadlines set forth in ''maximum achievable control technology'' (MACT) emission standards under section 112 and for submittal of Title V permit applications, the EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue.

West Virginia's satisfaction of the criteria published in the **Federal Register** of June 28, 1989, has been discussed above. In addition, West Virginia's 45CSR13 program meets the statutory criteria for approval under 112(l)(5). EPA believes West Virginia's 45CSR13 program contains adequate authority to assure compliance with section 112 requirements since it does not provide for waiving any section 112 requirement(s). Sources would still be required to meet section 112 requirements applicable to non-major sources. Regarding adequate resources, West Virginia subjects sources required to be permitted under 45CSR13 to the State's fee regulation, 45CSR22 ''Air Quality Fee Program''. Furthermore, EPA believes that West Virginia's 45CSR13 program provides for an expeditious schedule for assuring compliance because it allows a source to establish a voluntary limit on potential to emit and avoid being subject to a Federal Clean Air Act requirement applicable on a particular date. Nothing in West Virginia's 45CSR13 program would allow a source to avoid or delay compliance with a Federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. Finally, West Virginia's 45CSR13 program is consistent with the objectives of the Section 112 program because its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. EPA believes that this purpose is consistent with the overall intent of section 112. The Technical Support Document contains a more thorough analysis of West Virginia's 45CSR13 program against the statutory criteria for approval under 112(l)(5).

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Proposed Action

EPA is proposing to disapprove the exemption from minor new source review for sources issued Title V permits as such an exemption does not comport with the Federal requirements of 40 CFR 51.160. EPA is also proposing to disapprove the new provisions governing the issuance of temporary construction or modifications permits as such provisions do not satisfy the Federal requirements for public participation of 40 CFR 51.161. EPA is proposing to approve all other portions of 45CSR13 as a revision to the West Virginia SIP. Such an action will enable EPA to approve and make federally enforceable the many updates and improvements from the SIP approved version of the program, and at the same time prevent serious relaxations of the SIP related to the program's scope and public participation requirements.

EPA is proposing to approve 45CSR13 under section 110 of the Act because the program meets the June 28, 1989 approval criteria for federally enforceable state operating permit programs. For this reason and because the program meets the statutory requirements of section 112(l)(5) of the Act, EPA is also proposing approval of West Virginia's 45CSR13 program pursuant to section 112(l) of the Act for the purpose of limiting the potential to emit of HAPs. Such an action will confer Federal enforceability status to existing stationary source operating permits which are issued to sources of criteria pollutants or HAPs in accordance with 45CSR13 and the five June 28, 1989 criteria, including permits which have been issued prior to EPA's final action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory authority.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare

a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove this revision to the West Virginia SIP for minor sources will be based on whether it meets the requirements of section 110(a)(2)(A)–K) and of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 22, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 98–2615 Filed 2–2–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI55–01–7263; FRL–5958–6]

Approval and Promulgation of State Implementation Plan; Michigan; Site-Specific SIP Revision for Leon Plastics, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 24, 1996, the Michigan Department of Environmental Quality submitted a revision to the State's Ozone State Implementation Plan. This submittal requested federal approval of an alternative to the State's federally approved R 336.632 Emission of volatile organic compounds from existing automobile, truck, and business machine plastic part coating lines or ''Rule 632.'' The Environmental Protection Agency (EPA) is proposing to disapprove this alternative to the generally applicable Rule 632 because it is not consistent with the Clean Air Act and applicable EPA policy.

DATES: Comments on this proposed rule must be received on or before March 5, 1998.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. State Submittal

On September 7, 1994, EPA federally approved Michigan's R 336.632 Emission of volatile organic compounds from existing automobile, truck, and business machine plastic part coating lines or ''Rule 632.'' Michigan had adopted this rule to fulfill the State's requirement for volatile organic compound (VOC) Reasonably Available Control Technology (RACT) for the purposes of attaining and maintaining the national ambient air quality standard for ozone.

Rule 632 limits the VOC content of air dried interior automotive plastics coatings to 5.0 lbs of VOC per gallon of coating, minus water. This limit reflects the suggested VOC content limit found in EPA's Alternative Control Techniques (ACT) document for this source category (''Surface Coating of Automotive/Transportation and Business Machine Plastic Parts'').

The vinyl coating operations performed by Leon Plastics, Inc. are subject to Michigan's Rule 632 and to the 5.0 VOC lb per gallon limit.

On September 24, 1996, the Michigan Department of Environmental Quality (MDEQ) submitted to EPA a revision to the State's Ozone State Implementation Plan. This submittal requested federal approval of an alternative to the State's Rule 632 that applies to Leon Plastics.

Leon Plastics has been issued a permit (Permit to Install 94–87B) by the State of Michigan that allows this facility to comply with the applicable limit by allowing both cross-line average of two coating lines, based on a 30 day average. Before this compliance methodology can become federally enforceable, the